IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16519 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJENDRA ALIAS BALIYO GANGARAMSHIVGAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16519 of 2003

MS SUBHADRA G PATEL for Petitioner No. 1

MS Mita S Panchal AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 29/03/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing

and setting aside an order dated 01/10/03, passed by respondent no.2 herein, for detaining the petitioner u/s.3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short, "the said Act").

2. The allegation against the petitioner was that he was involved in two prohibition offences on 14/06/02 and 02/09/02. It was also alleged against him that two unnamed witnesses had rendered their statements against the petitioner and that they were verified by the detaining authority. That on the strength of the aforesaid two registered offences and on the strength of the two unregistered cases, the petitioner was found to be a "bootlegger" and therefore, was detained as aforesaid.

3. The petitioner has challenged the said order of his detention on several grounds. One of the contentions is that the petitioner could not be treated to be a "bootlegger". It has also been contended that the representation of the petitioner was not promptly disposed of and that there was unexplained delay in disposing of the same. That, therefore, the continued detention is illegal. The petitioner has, therefore, prayed that the present petition be allowed and the detention order may be quashed and set aside.

4. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita S Panchal learned AGP has appeared on behalf of the State. I have heard the learned advocates for the parties and have perused the papers.

5. The learned advocate for the petitioner has contended that the petitioner had submitted a representation to the Minister of the State of Gujarat and that the said representation was not dealt with and decided promptly. For this purpose, it has been contended that the representation was sent by a Registered Post which was received by the office of the concerned Minister on 17/11/03. The learned AGP makes a statement that the said representation was forwarded to the department on 20/11/03 and that it was forwarded by the Dy.Secretary to the Addl.Chief Secretary on 21/11/03 which was decided on 24/11/03. She, therefore, claims that there is no delay in dealing with the representation.

6. Now, if the representation was received on 17/11/03 by the office of the concerned Minister, then there was no necessity for the said office to retain the

same with it for two days, since it has been forwarded to the Dy.Secretary on 20/11/03. This delay has not been explained.

7. Then, instead of taking decision on the issue, the Dy.Secretary forwarded it to the Addl.Chief Secretary on 21/11/03. It has been contended that the Dy.Secretary was not competent to decide the representation. Here we may find that along with the grounds for detention it was conveyed to the petitioner that if he wanted to send his representation, it was open to him to do so by sending the said representation either to the detaining authority or to the Dy.Secretary, Home Department (Special - 3) or to the Secretary of the Advisory Board. This would mean that the Dy.Secretary was competent to decide the representation.

8. In the present case, we find that the Dy.Secretary did not do so and he forwarded it to the Addl.Chief Secretary which has further delayed the decision in the matter. If the Dy.Secretary was not competent to decide the issue, then the detaining authority should not have mentioned his name in the aforesaid list at page 17. On the other hand, if he was competent to decide it, he should have decided it promptly, without forwarding it to the Addl.Chief Secretary. These things have not been explained by the State Government by way of affidavit also. Therefore, there appears to be a delay which has not been explained. Unexplained delay is naturally fatal to the detention order and consequently, the continued detention is unwarranted. In that view of the matter, when the continued detention is not warranted, the order of detention is required to be quashed and set aside.

9. For the foregoing reason, this petition is allowed. The impugned order of detention dated 01/10/03 passed against the detenu, is ordered to be quashed and set aside. Detenu, Rajendra alias Baliyo Gangaram Shivgan, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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